

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

SARA KHALIL,

Plaintiff,

vs.

THE CITY OF LINCOLN, a political
subdivision; LERION GAYLOR-BAIRD, and
TERESA EWINS,

Defendants.

4:23CV3159

MEMORANDUM AND ORDER

This matter is before the Court on defendants' motion for reconsideration, [Filing No. 52](#). This Court previously entered a Memorandum and Order, [Filing No. 49](#), dismissing certain claims and denying dismissal of other claims. The defendants have moved to clarify, stay the scheduling orders, and for reconsideration of portions of the Court's Memorandum and Order.

Defendants request that the Court enter an order clarifying its Memorandum and Order of December 30, 2024, [Filing No. 49](#), that all of Plaintiff's claims for free speech retaliation under the Equal Protection Clause have been dismissed in Plaintiff's Eighth Cause of Action. The City requests that the Court clarify that Plaintiff's Seventh Cause of Action has been dismissed and that the Court reconsider Plaintiff's claim for invasion of privacy false light and dismiss said claim. [Filing No. 52](#). Defendants further request that the Court enter an Order staying their deadlines to file an answer and the other deadlines in its Scheduling Order of December 31, 2024, [Filing No. 50](#), pending the resolution of this motion. Plaintiff argues that the Memorandum and Order is clear and follows the law,

and therefore, the Court should deny in whole the motion for reconsideration filed by the defendants. *Id.*

DISCUSSION

1. Claims for Free Speech under the Equal Protection Clause – Eighth Cause of Action

Defendants make the same arguments that they made in their previous brief regarding the initial motion to dismiss. See [Filing Nos. 15, 16, 18, 19, 21, and 22](#). Namely, the defendants contend that there is no separate claim in the Second Amended Complaint for a First Amendment violation, absent the claim for Equal Protection. [Filing No. 53 at 9](#). Plaintiff argues, again, that the language in its Second Amended Complaint clearly sets forth a claim for First Amendment violations separate and apart from the one for Equal Protection. [Filing No. 55 at 2–3](#). The Court again finds that Plaintiff's Eighth Cause of Action raises First Amendment retaliation claims, actionable under Section 1983, against the individual Defendants. [Filing No. 35 at 52–53, ¶¶ 302–08](#). The Court agrees as set forth in its Memorandum and Order, [Filing No. 49](#), that the First Amendment claims are in and the Equal Protection claims as to the First Amendment are out. However, the Court will allow the Plaintiff to amend this Cause of Action to delete the Equal Protection claim and to change the labels regarding the same and to clarify the First Amendment claim.¹ The Court will permit the amendment as stated herein.

2. Seventh Cause of Action – Equal Protection Clause

Defendants argue that their same analysis applies to the Equal Protection Clause

¹ Defendant previously objected to the motion to amend by the plaintiff, and the Court denied this motion to amend. However, due to the fact that defendants have made numerous arguments regarding whether plaintiff has in fact made a claim for First Amendment violations, the Court finds it is in the best interests of the parties to again make it perfectly clear.

as it does in the Eighth Cause of Action. The Court agrees that there is no Equal Protection claim for violation of the First Amendment. However, Plaintiff's Second Amended Complaint in the Seventh Cause of Action includes in its sub-heading "First Amendment Retaliation." [Filing No. 35 at 49](#). All of the allegations included in this claim relate to the First Amendment, not the Equal Protection Clause. [Id. at 49–52](#), ¶¶ 284–301. As stated in Part "1" above, the Court is permitting the Plaintiff to clarify its First Amendment claims without the involvement of the Equal Protection Clause.

3. *The City also requests that the Court reconsider and dismiss Plaintiff's Ninth Cause of Action for Invasion of Privacy False Light.*

The Court will not make any changes in this regard. There is not sufficient information or facts for the Court to decide at this point whether the evidence will support what cause of action. The Court will let this claim proceed, and the defendants can choose to raise this issue on a motion for summary judgment or whatever vehicle is appropriate at a later date.

4. *Motion to stay the deadlines*

The Court has addressed all issues named in this motion. Accordingly, there is no reason to further delay or stay this case. The Magistrate Judge is hereby ordered to set the deadlines henceforth.

THEREFORE, IT IS ORDERED THAT:

1. The Court confirms that the First Amendment claims in the Seventh and Eighth Causes of Action that relate to the Equal Protection Clause are dismissed.
2. The Court will not reconsider the Ninth Cause of Action for Invasion of Privacy False Light.

3. The Plaintiff has 14 days from the date of this Memorandum and Order to file an Amended Complaint as to the First Amendment claims without reference to the Equal Protection Clause.
4. The Court will not further stay the progression of this case, and the Magistrate Judge is ordered to progress it as soon as possible.

Dated this 3rd day of April, 2025.

BY THE COURT:

s/ Joseph F. Bataillon
Senior United States District Judge